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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 000218

SIPDIS

DEPT FOR EAP, EAP/MTS, L/EAP, EAP/PD

E.O. 12958: DECL: 01/17/2016

TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)

SUBJECT: SUBIC CASE UPDATE: JANUARY 17

REF: A. MANILA 192

[B](#). MANILA 191

[C](#). MANILA 134 AND PREVIOUS

Classified By: Acting Pol/C Joseph L. Novak for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary. Local media have begun reporting on the US Embassy's decision to retain custody of the four Marines charged with rape in the Philippines. The Marines' defense attorneys have submitted Motions for Reconsideration of the issuance of any arrest warrants; three Marines have also appealed to the Department of Justice to overturn the prosecutor's findings of probable cause. The NCIS investigator in the case met with the alleged victim's psychologist, who continues to refuse to allow the alleged victim to speak to either NCIS or the prosecutors. According to the State Prosecutor, she is unlikely to appear at any trial. Members of the Congressional VFA Oversight Committee have delayed their joint visit the Marines at the Embassy until February 9. End Summary.

[1](#)2. (C) Local media began on January 17 reporting on the US Embassy's decision to retain custody of the four Marines charged with rape in the Philippines, based initially on comments from Justice Secretary Raul Gonzalez in a radio interview that, according to the DFA, the U.S. had invoked the Visiting Forces Agreement and refused to allow the GRP to take custody of the Marines. By the afternoon of January 17, a fuller story had appeared in the Associated Press, which confirmed the rejection and cited specific passages of the U.S. diplomatic note. Post issued a public statement (text in para 7) in response to queries by late afternoon on January 17.

[1](#)3. (C) On Monday, January 16, all four defense attorneys submitted Motions for Reconsideration to the Olongapo Regional Trial Court regarding the issuance of any arrest warrants. A hearing is set for Friday, January 20. The defense attorneys for SSgt Chad Carpentier, LCpl Keith Silkwood, and LCpl Dominic Duplantis have appealed to DOJ to overturn the prosecutor's findings of probable cause, despite an earlier denial of their Joint Motion to Suspend Proceedings (ref B). DOJ has now received all three appeals and, under Philippine law, has 60 days to respond.

[1](#)4. (C) On January 17, NCIS attache met with Estrella Tionson-Magno, the alleged victim's psychologist. The meeting was cordial but unproductive. Tionson-Magno told NCIS that she will continue to refuse to allow the alleged victim to speak to either NCIS or the prosecutors in the case, citing the alleged victim's fragile emotional state. She further reported that the victim seems to be on the verge of a nervous breakdown, and is too distraught to discuss the incident with anyone, including the psychologist herself. When asked by NCIS, Tionson-Magno confirmed that neither the prosecution nor the defense has asked the alleged victim if she wants to testify in her case. When NCIS mentioned that a U.S. military court martial might not require any testimony from the alleged victim, Tionson-Magno expressed interest in that process. The NCIS attache subsequently reported the psychologist's continued refusal of access to the alleged victim to the prosecutor in the case.

[1](#)5. (C) State Prosecutor Zuno privately told emboffs on January 17 that the victim would definitely not appear in any trial. DFA officials have similarly predicted such an outcome and indicated that this would doom the legal case.

[1](#)6. (U) Members of the Congressional VFA Oversight Committee asked to delay their January 18 visit to the Marines at the Embassy until February 9.

[1](#)7. (U) Text of January 17 U.S. Embassy statement on custody on the Marines:

BEGIN TEXT

STATEMENT: U.S. EMBASSY REPLY ON CUSTODY TRANSFER REQUEST OF U.S. MARINES

The Visiting Forces Agreement (VFA) continues to provide a framework of cooperation in the pursuit of justice. Article 5, paragraph 6 of the VFA clearly states: "The custody over

any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense until completion of all judicial proceedings."

The U.S. Government has decided that it will retain custody of the four U.S. Marines accused of the crime of rape, as allowed under this provision. The U.S. Embassy officially conveyed this decision to the Department of Foreign Affairs on January 16, 2006, by diplomatic note.

The U.S. will continue to cooperate with the Philippine authorities as this case moves to trial under Philippine jurisdiction, in accordance with the Visiting Forces Agreement. The U.S. remains committed to seeing that justice is served, and looks forward to a fair and impartial process that can provide for a just outcome.

END TEXT
Jones